In the Supreme Court of the United States.

OCTOBER TERM, 1904.

RICARDO AMADO, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 33.

STATEMENT OF THE CASE.

This case is brought here on a writ of error to review the judgment of the district court of the United States for the district of Porto Rico. The plaintiff in error, Ricardo Amado, on the 27th day of October, 1902, was convicted in the United States court for the district of Porto Rico for having violated section 3082 of the Revised Statutes of the United States. The indictment charges him with having unlawfully received and concealed certain merchandise which had been imported into the district of Porto Rico contrary to law, the custom duties never having been paid. The court sentenced him to the penitentiary for one year and one day, and to pay a fine of $500. A motion for a new trial was thereafter made upon the ground that the evidence did not show that the goods described in the indictment had ever been smuggled into the island of Porto Rico. This motion was overruled by the trial

court, and the case is here for review upon three assignments of error.

Before considering the questions of law raised by the assignments of error, we desire to make the point that this court is without jurisdiction to review this case.

I.

THE QUESTION OF JURISDICTION.

The Supreme Court of the United States is without jurisdiction to review a judgment of the United States district court for the district of Porto Rico, except in those cases "Where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied."

The trial court in its order allowing this writ of error expressed a doubt as to whether a writ of error would lie in this case to the Supreme Court of the United States, under section 35 of the Foraker Act of April 12, 1900 (31 Stats., 77, 85), but thought it proper to resolve that doubt in favor of the defendant, knowing that it would be corrected by this court if in error. (Rec., p. 7.)

The authority of law, if any exists, for bringing this case here by writ of error must be found in section 35 of the act above referred to. That section is as follows:

> That writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same

> cases as from the supreme courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied; and the supreme and district courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district and circuit courts of the United States. All such proceedings in the Supreme Court of the United States shall be conducted in the English language. (31 Stats., 85.)

It is manifest that this law authorizes an appeal or writ of error only in those cases in which "the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied." We have, therefore, only to examine the assignments of error for the purpose of ascertaining whether this case can be brought within any of the aforesaid provisions of the law in which an appeal is specifically authorized.

The assignments of error, while three in number, practically present but two questions for consideration: First. That the indictment does not state an offense under the laws of the United States. Second. That the verdict rendered by the jury was not sustained by the evidence, but contrary thereto. (Rec., pp. 5–6.)

It is therefore manifest that no constitutional question is involved in this case, nor any question arising

under a treaty of the United States. We must therefore determine whether "an act of Congress is brought in question and the right claimed thereunder is denied;" and if we can demonstrate that no act of Congress is brought in question by this record, it conclusively follows that this court is without jurisdiction to review this case.

The law under which the plaintiff in error was indicted, convicted, and sentenced is contained in section 3082 of the Revised Statutes of the United States, which is as follows:

> If any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury.

The section of the Revised Statutes above quoted was extended and applied to the island of Porto Rico

by section 14 of the Foraker act of April 12, 1900 (31 Stats., 80):

> SEC. 14. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico.

We maintain that, inasmuch as the assignments of error in this case raise no question as to the proper construction or interpretation of this act of Congress and do not assert that any right claimed thereunder has been denied, the case is not one which is authorized by law to be brought before this court by writ of error. It is true that the indictment is attacked upon the ground that it fails to state a public offense, but it is difficult to see in what manner "an act of Congress is brought in question and the right claimed thereunder is denied" by asserting that the indictment fails to state a public offense.

Crowley v. United States, 194 U. S., 461–466.

This was a criminal case brought to this court by a writ of error from the district court of the United States for the district of Porto Rico. The Government contended, upon the argument of that case, that this court was without jurisdiction and that the appeal should be dismissed. The court, however, sustained its jurisdiction, and in the opinion delivered by Mr.

Justice Harlan clearly pointed out that an act of Congress was brought in question and that a right claimed thereunder had been denied. The court said:

> The first question is one of the jurisdiction of this court; the Government insisting that, under existing statutes, we are without authority to review the judgment in this case.
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> By the thirty-fifth section of the Foraker act of April 12, 1900 (31 Stat., 85, c. 191), it is provided, among other things, that writs of error and appeals to this court from the final decisions of the district courts of the United States shall be allowed in all cases where "an act of Congress is brought in question and the right claimed thereunder is denied." In this case that act was brought in question by the contention of the parties, the contention of the accused being, in substance, that pursuant to that act of Congress the court below, in the matter of the qualifications of grand jurors, should have been controlled by the provisions of the local law relating to jurors, in connection with the statutes of the United States relating to the organization of grand juries and the trial and disposition of criminal causes; and the court below deciding that, notwithstanding the Foraker act, the local act of January 31, 1901, referred to in the plea, was not applicable to this prosecution, and that the grand jury finding the indictment, if a grand jury was necessary, was organized consistently with the laws of the United States under which the court proceeded. It thus appears that the ac-

> cused claimed a right under the act of Congress and under the Revised Statutes of the United States, which, it is alleged, was denied to him in the court below. This court has, therefore, jurisdiction to inquire whether there is anything of substance in that claim.

In the case at bar, however, there arose no controversy in the court below with respect to the act of Congress upon which the indictment was predicated, or any other act of Congress, it being assumed and conceded, so far as the record shows, that such act of Congress was not only constitutional and applicable, but that its meaning was clear and unambiguous. Neither did the plaintiff in error claim that any right under such law had been denied him by the trial court. His contention was simply that the United States had failed to properly frame an indictment under the law, so as to charge him with having committed a public offense; in other words, that the indictment was fatally defective.

Such question manifestly is not reviewable by this court under the provisions of the Foraker act above quoted, and we respectfully submit that this writ of error must be dismissed for want of jurisdiction in this court to review the case.

Possibly it may be contended by counsel for the plaintiff in error that the jurisdiction of this court to entertain this appeal is authorized by the first part of section 35 of the Foraker Act, above referred to. A

brief examination of the law will disclose that such a position is untenable:

> That writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed, and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States. (Sec. 35, Foraker Act.)

It is apparent that Congress intended to confer the right to an appeal or writ of error from the final decision of the district court of the United States for the district of Porto Rico to the Supreme Court of the United States *in the same cases* in which an appeal or writ of error was allowed from the supreme courts of the Territories to the Supreme Court of the United States. In other words, if, under the law as it existed at the time of the passage of the Foraker Act, an appeal or writ of error would lie *in certain cases* from the supreme courts of the Territories to the Supreme Court of the United States, *then, and in such cases*, an appeal was given by the first part of section 35 of the Foraker Act, from the supreme court of Porto Rico and the district court of Porto Rico direct to the Supreme Court of the United States.

It is necessary, therefore, for us to ascertain and determine whether the case at bar is *such a case* as, had the judgment been rendered in a supreme court of one of the Territories, an appeal would now lie to

the Supreme Court of the United States; for if it be *such a case*, then it must necessarily follow that this writ of error was properly allowed and that this court has jurisdiction to determine this appeal.

This is a criminal case, not capital, and does not raise any of the questions referred to in section 5 of the judiciary act of March 3, 1891 (26 Stats., 826). Under section 6 of that act a case of this character was made final by the decision of the circuit court of appeals of the circuit in which it arose. Under section 15 of that act a case of this character arising in one of the Territories and carried by appeal to the supreme court of the Territory was made final in the circuit court of appeals. Section 15 of the judiciary act of March 3, 1891, is as follows:

> That the circuit court of appeal in cases in which the judgments of the circuit courts of appeal are made final by this act shall have the same appellate jurisdiction, by writ of error or appeal, to review the judgments, orders, and decrees of the supreme courts of the several Territories as by this act they may have to review the judgments, orders, and decrees of the district court and circuit courts; and for that purpose the several Territories shall, by orders of the Supreme Court, to be made from time to time, be assigned to particular circuits.

It is obvious, therefore, that if the judgment in this case had been rendered in the supreme court of one of the Territories there would have been no appeal from such judgment to the Supreme Court of the United States, appellate jurisdiction *in such cases* being vested

exclusively in the circuit court of appeals. It clearly follows, therefore, that so far as this particular case is concerned this court has no jurisdiction to review by writ of error the final judgment of the United States district court for the island of Porto Rico, even under the first part of section 35 of the Foraker Act.

Shute v. Keyser (149 U. S., 649, 651).

> The result is that, as the acts regulating appeals or writs of error from or to the supreme courts of the Territories to or from this court were not repealed, except to the extent specified, an appeal or writ of error lies to this court from the judgments or decrees of those courts, except in cases where the judgments of the circuit courts of appeals are made final.

Had the precise case which we have here under discussion arisen in the Territory of Arizona the circuit court of appeals for the ninth circuit could have reviewed the decision of the supreme court of that Territory by writ of error under section 15 of the judiciary act of March 3, 1891. It may be that the decision of the United States district court of Porto Rico in this case can not, under the law, be reviewed in the circuit court of appeals, and that the plaintiff in error is not in as favorable a position, so far as having his case reviewed is concerned, as he would have been had the crime been committed in the Territory of Arizona. This, however, is clearly immaterial, the question for determination being *whether this is a case which, had it been decided by the supreme court of a Territory, could be reviewed by the Supreme Court of the United States.* We find

that it is not such a case, and it follows, therefore, that it is not one of *those cases* referred to in the first part of section 35 of the Foraker Act.

II.

The allegations contained in the indictment follow the language of the statute, and are sufficient to charge a public offense under section 3082 of the Revised Statutes.

Section 3082 provides:

> If any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury.

Under this law, and section 14 of the Foraker act, hereinbefore quoted, extending and applying the same to the island of Porto Rico, it is made a public offense to receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of mer-

chandise imported contrary to law, knowing the same to have been so imported. The indictment (Rec., p. 1) charges Ricardo Amado in almost the precise language of the statute with having knowingly and unlawfully received, concealed, and facilitated the transportation, concealment, and sale of certain merchandise, describing it, subject to the payment of duties to the United States, and upon which no duties had been paid, and contains every material averment necessary to apprise the defendant of the crime with which he was charged. This court has repeatedly held that an indictment which follows the language of the statute is sufficient in those cases wherein the language of the statute describes all the necessary elements of the offense, and is sufficient to advise the defendant of the crime with which he is charged.

Ledbetter v. United States (170 U. S., 606, 611).

> The cases wherein it is held that an indictment in the exact language of the statute is not sufficient are those wherein the statute does not contain all the elements of the offense, as in *United States* v. *Carll* (105 U. S., 611), where a statute against passing counterfeit money failed to aver the scienter; but where the statute sets forth every ingredient of the offense an indictment in its very words is sufficient, though that offense be more fully defined in some other section. (*United States* v. *Gooding*, 12 Wheat., 460, 473.)

III.

The third assignment of error to the effect "that said verdict was not sustained by the evidence but was contrary thereto," will not be considered by this court for the following reason:

(a)

An assignment of error based upon the insufficiency of evidence must point out the parts in which the evidence is insufficient or it will not be considered. A mere general assignment of error that the verdict is contrary to the evidence, or contrary to the law and the evidence, is too general and will not be considered.

Grand Trunk Railway Company v. Ives (144 U. S., 408, 415, 416).

Furthermore, this assignment of error is too broad and general, under the twenty-first rule of this court, to bring up such a specific objection as it seeks to do. This court should not be put to the labor and trouble of examining the whole of the evidence to see whether there was enough for the verdict below to have rested upon. But any objection made to the nonexistence of evidence to support the verdict and judgment below should, in the language of the rule, "set out separately and particularly each error asserted and intended to be urged." (*Van Stone* v. *Stillwell & Bierce Manufacturing Co.*, 142 U. S., 128.) In our opinion, therefore, this point raised by the plaintiff in error is without merit. As to whether, as a matter of fact, there was evidence respecting the existence of any beneficiaries to this action, we do not, of course, express any opinion. In the view above taken

of the matter, it is not necessary to decide that point. The legal presumption is that there was; and we shall proceed to consider the other assignments of error upon that presumption.

(b)

The claim is made by the plaintiff in error that the verdict of the jury was contrary to the evidence, for the reason that it was not proven upon the trial that the goods alleged to have been concealed were actually smuggled into the island of Porto Rico.

It is sufficient to point out that during the progress of the trial, and at the termination thereof, the attention of the trial court was not directed to the absence of such evidence, nor was any request submitted to the court to charge the jury relative thereto. The first time that this question was called to the attention of the court was in the motion for a new trial (Rec., p. 4) after the motion in arrest of judgment had been made and overruled (Rec., p. 3). It is manifest that such defects in the proof could not properly be raised in such manner, for the reason that this court will not review on writ of error a refusal to grant a new trial. (*Alexander et al.* v. *United States*, 57 Fed. Rep., 828; *Harliss* v. *United States*, 92 Fed. Rep., 353; *Young* v. *United States*, 95 U. S., 641; *Van Stone* v. *Stillwell & Bierce Manufacturing Company*, 142 U. S., 128.)

(c)

Section 1011 of the Revised Statutes provides as follows:

> There shall be no reversal in the Supreme Court or in a circuit court upon a writ of error,

for error in ruling any plea in abatement other than a plea to the jurisdiction of the court, or for any error in fact.

Martinton v. Fairbanks (112 U. S., 670, 672).

The provision of section 1011, Revised Statutes, continues in force and forbids a reversal of the judgment of the circuit court for any error of fact. Upon the issues of fact raised by the pleadings in this case there was a general finding for the plaintiff. The defendant contends that the evidence submitted to the court did not justify this general finding. But, if the finding depends upon the weighing of conflicting evidence, it was a decision on the facts, the revision of which is forbidden to this court by section 1011 If the question was whether all the evidence was sufficient in law to warrant a finding for the plaintiff, he should have presented that question by a request for a definite ruling upon that point.

See also *Van Stone* v. *Stillwell & Bierce Manufacturing Co.*, 142 U. S., 128.

(d)

And, finally, we may point out for the information of the court and the satisfaction of the plaintiff in error that the evidence was sufficient to establish the fact that the liquors mentioned in the indictment had been imported into the island of Port Rico without the payment of the duties required by law.

Enrique Molina y Enriquez, a captain of the insular police, testified (Rec., p. 13) that you could see upon all the boxes in which this liquor was found the mark

"A. Lugo y Cie., St. Thomas," and inferentially that the boxes were new and that the corks and wires of the bottles were free from rust, which indicated that they had been packed recently.

The witness Thomas M. Cook, special deputy collector of customs (Rec., p. 22), testified that these goods had not been imported into the island of Porto Rico from the port of St. Thomas, and on page 24 of the record the district attorney offered to prove that the firm of A. Lugo & Co. did business in St. Thomas, and thereupon Judge Hord, counsel for the plaintiff in error, admitted such fact.

From this testimony, and in the absence of any testimony to the contrary, the jury were certainly justified in finding as a fact that these wines and liquors had been imported into the island of Porto Rico contrary to law.

We respectfully submit, therefore, that this writ of error either must be dismissed for want of jurisdiction or the decision of the trial court in all things affirmed.

MILTON D. PURDY,
Assistant Attorney-General.

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